

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

PIANTONI GOREA, :
 :
Petitioner, : No. 4:CV-06-2077
 :
vs. : Case transferred 10/23/06
 :
THOMAS HOGAN, et al., : (Judge Muir)
 :
Respondents : (Magistrate Judge Blewitt)

ORDER

December 7, 2006

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Petitioner Piantoni Gorea is a native and citizen of Romania currently in the custody of the United States government at the York County Prison based upon the issuance of a final order to deport him to his native country. On March 27, 2006, Gorea filed in the United States District Court for the Eastern District of California a document totaling 91 pages in length.

The documents appear to raise numerous claims for relief arising out of 1) one of his prior criminal convictions in the State of California, and 2) his continued detention in the York County Prison pending his removal from this country. Gorea has improperly attempted to consolidate separate civil rights actions and petitions for writs of habeas corpus into one action. Gorea is proceeding *pro se* and has filed an application to proceed in *forma pauperis*. By order dated October 20, 2006, the United

CLAYTON D. DUNN, CLERK
For Deputy Clerk

States District Court for the Eastern District of California transferred the matter to this judicial district because jurisdiction and venue properly lie here. The court took that action without considering the merits of Gorea's claims.

The Clerk of Court assigned this case to us and referred it to Magistrate Judge Thomas M. Blewitt for processing. Magistrate Judge Blewitt preliminarily screened Gorea's filings pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, and 28 U.S.C. § 1915 before requiring that any portion of Gorea's filing be served upon a Respondent or Defendant.

On November 8, 2006, the Magistrate Judge issued a report in which he recommends that: 1) the 91-page document filed by Gorea to initiate this action be stricken from the record; 2) for various reasons (which are discussed in detail in the Magistrate Judge's Report and Recommendation) all of Gorea's habeas corpus claims should be dismissed from this action without prejudice to his rights to pursue those claims in either a separately filed habeas corpus petition or a petition for review in the Court of Appeals for the Third Circuit; 3) Gorea be required to file an amended civil rights complaint under the caption of this case if he wishes to pursue his claims for damages based on his continued detention at the York County Prison; and 4) Gorea's civil rights

claims pertaining to his conviction and confinement in California be dismissed without prejudice to Gorea's right to pursue those claims in a separate civil rights complaint.

The practical results of Magistrate Judge Blewitt's recommendations are that a limited number of Gorea's civil rights claims will proceed under the caption of this case by way of an amended complaint to be filed by Gorea, and that all of Gorea's other claims will be dismissed from this case without prejudice.

The time allowed for Gorea to file objections to the Report and Recommendation expired on November 27, 2006. To this date no objections have been filed. Magistrate Judge Blewitt's Report and Recommendation is ripe for disposition. When no objections are filed to the report of a Magistrate Judge, we need only review that report as we in our discretion deem appropriate. *Thomas v. Arn*, 474 U.S. 145, 151-52 (1985).

As a threshold matter, we will grant Gorea's application to proceed *in forma pauperis* strictly for the purposes of this order.

The reasoning and conclusions reached by Magistrate Judge Blewitt in this case pertaining to Gorea's habeas corpus claims are consistent with the actions this court has previously taken in three prior habeas corpus petitions filed by Gorea. See *Gorea v. United States District Court for the Northern District of*

California, Nos. 4:CV-06-625, 4:CV-06-0804; Gorea v. Ashcroft and Ziglar, No. 4:CV-06-1089. In each of those cases Magistrate Judge Blewitt issued a Report and Recommendation to which Gorea did not object. For the reasons set forth in those prior Reports and Recommendations, and our orders adopting them *in toto*, we will adopt Magistrate Judge Blewitt's recommendations concerning the habeas corpus claims asserted by Gorea in this case. We will dismiss all of those claims without prejudice to Gorea's rights either to file a petition for review in the Court of Appeals for the Third Circuit, or to file a separate habeas corpus petition or petitions.

We also agree with the Magistrate judge's recommendations concerning Gorea's civil rights claims. The claims pertaining to his detention in the York County Prison may be pursued in this action by way of an amended complaint. We do not have jurisdiction over any civil rights claims relating to Gorea's incarceration in California, and those claims may be pursued only in a complaint filed in the appropriate district court.

We will adopt all of Magistrate Judge Blewitt recommendations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Gorea's application to proceed in forma pauperis is granted strictly for the purposes of this order.

2. Magistrate Judge Blewitt's Report and Recommendation (Document 5) is adopted *in toto*.
3. The 91-page document filed by Gorea to initiate this action shall be stricken from the record.
4. All of Gorea's habeas corpus claims are dismissed without prejudice.
5. All of Gorea's civil rights claims relating to his conviction and incarceration in California are dismissed without prejudice.
6. Gorea may, within 45 days after the date of this order, file an amended civil rights complaint relating to his continued detention at the York County Prison.
7. This case is remanded to Magistrate Judge Blewitt for further proceedings.
8. Any appeal from this order will be deemed lacking in probable cause and a certificate of appealability will not issue.



MUIR, U. S. District Judge

MM:gja